



---

# Wisconsin Briefs

*from the Legislative Reference Bureau*

---



Brief 06-6

April 2006

## CONCEALED WEAPON LAWS IN THE STATES

Wisconsin voters ratified a constitutional amendment in 1998 granting citizens the right to keep and bear arms for lawful purposes. Since then, nine bills have been introduced in the legislature to allow the carrying of concealed weapons. In the 2003-2004 session, 2003 Senate Bill 214 passed the legislature, but was vetoed by Governor Jim Doyle. Most recently, 2005 Senate Bill 403 passed the legislature in mid-January 2006 and was also vetoed by Governor Doyle. Senate Bill 403 allowed a person to be licensed to carry a concealed weapon, including a firearm, knife, billy club, and electric weapon, with certain exceptions.

Proponents of the bill argue that carrying concealed weapons deters crime and provides a means for individuals to protect themselves when police protection is unavailable. Others – including most law enforcement agencies – oppose carrying concealed weapons, arguing that crime would increase and that individual reactions to stressful situations could turn deadly if a firearm is readily available.

This brief provides a summary of current Wisconsin law and 2005 Senate Bill 403; a review of legislation pending in Nebraska and Kansas; and an overview of the concealed weapon laws in Florida, Ohio, Iowa, Vermont, and Missouri. In addition, this brief reviews other legislation being considered by states with right to carry laws.

### CURRENT WISCONSIN LAW

Section 941.23, Wisconsin Statutes, provides that any person except a peace officer who goes armed with a concealed and

dangerous weapon is guilty of a Class A misdemeanor. However, in November 1998, the Wisconsin Constitution was amended to state: “The people have the right to keep and bear arms for security, defense, hunting, recreation, or any other lawful purpose” (Article I, Section 25).

In two cases decided in 2003, the Wisconsin Supreme Court considered whether the state’s statutory prohibition on the carrying of concealed weapons became unconstitutional with the adoption of Article I, Section 25. In *State v. Cole*, 2003 WI 112, 264 Wis. 2d 520, the court ruled that the statute is not unconstitutional in all cases; however, in *State v. Hamdan*, 2003 WI 113, 264 Wis. 2d 433, the court ruled that the statute was unconstitutional under the circumstances of that case.

### 2005 SENATE BILL 403

During the 2005-2006 legislative session, Senate Bill 403 was introduced by Senator David Zien, Senator Scott Fitzgerald, and 11 other senators, and cosponsored by Representative Scott Gunderson, Representative Scott Suder, and 30 other representatives. Following passage by the legislature, Governor Doyle vetoed the bill on January 20, 2006. The legislature failed in its attempt to override the veto. The bill allowed a licensee to carry a concealed weapon with some restrictions and provided a procedure for applying for the license through the Department of Justice (DOJ). The license would have authorized the carrying of a handgun, an electric weapon, a knife other than a switchblade, or a billy club anywhere in

Wisconsin except where prohibited by law. Senate Bill 403 did not affect the provisions of the gun-free school zone law that prohibit a person from possessing a firearm in a public school itself or on the premises of a public school.

Senate Bill 403 specified the requirements to qualify for a license to carry a concealed weapon, including: the person must be eligible to possess a firearm under federal law and must not be prohibited from possessing a firearm under state law; the person must not have been committed to drug treatment during the preceding three years or convicted for a drug offense in the preceding three years; the person must not be a chronic or habitual user of alcohol or other substances to the extent that his or her faculties are impaired; and the person must not have been found to be incompetent, the subject of a protective placement as a minor based on a developmental disability, found guilty of a crime due to mental disease or defect, involuntarily committed for treatment of a mental illness in the preceding five years, or convicted of certain misdemeanors or serving a sentence for certain misdemeanors within the preceding three years.

The legislature will not likely consider this issue again during the remainder of the 2005-2006 session.

## **CONCEALED WEAPON LAWS IN OTHER STATES**

In March 2006, the Kansas Legislature overrode Governor Kathleen Sebelius' veto of Senate Bill 418, making Kansas the latest state to permit concealed weapons. Currently, 34 states require a permit to carry concealed weapons, and 11 states have laws that allow, but do not require, a concealed weapon permit to be issued under certain conditions. Alaska and Vermont do not require a permit to carry a concealed weapon. Along with Wisconsin,

Illinois and Nebraska prohibit carrying concealed weapons.

## **Concealed Weapons Permitted**

Each state that allows the carrying of concealed weapons has slightly different laws. The following description of the laws of Florida, Ohio, Iowa, Vermont, and Missouri illustrates the various approaches states have adopted in dealing with concealed weapons.

### **• Florida – “Shall-Issue”**

In 1987, the Florida Legislature passed a law that required authorities to issue a permit for the carrying of concealed weapons. The Florida law is typical of the laws in most states, which make issuance of a permit to carry a concealed weapon mandatory provided the applicant meets certain statutory criteria. These kinds of laws are known as “shall-issue” laws, because the issuance is mandatory and the issuing authority has no discretion beyond that provided by the statutes. Florida's law applies to nearly all types of concealed weapons, including knives, stun guns, and billy clubs, in addition to firearms. Not all “shall-issue” states are so liberal in their definition of weapon and many allow carrying only concealed firearms. Like many states, Florida allows for reciprocity with a number of, but not all, states that grant permits for the carrying of concealed weapons. Reciprocity is usually available between states that have substantially similar laws and criteria for carrying. Unlike some states, Florida does not permit the open, unconcealed carrying of firearms except under very limited circumstances. Florida law also prohibits carrying of open or concealed weapons in certain areas, such as schools or places that serve alcohol. The majority of states now have “shall-issue” laws, though many do not include weapons other than firearms or allow reciprocity with other states.

- **Ohio – Open Carry**

It became legal to carry a concealed handgun with a permit in Ohio in 2004. Like Florida, Ohio is a “shall-issue” state. Unlike Florida, however, Ohio law permits the open carrying of weapons in many places with no permit required. Ohio law, like the law of some other “shall-issue” states, also permits carrying concealed weapons in nearly any location. The law does not prohibit concealed weapons on most private property or in public facilities. Instead, it puts the responsibility on property owners to inform visitors, either verbally or by posting signs, that concealed weapons are prohibited. Other states prohibit carrying in a wide variety of public locations, and also generally presume that carrying in homes or places of business is prohibited with no affirmative action on the part of private property owners. Like many states, local governments in Ohio may implement their own laws on firearms. But under a recent state law in Ohio, local governments are expressly prohibited from preempting the state law allowing an individual to carry a concealed weapon with a permit in any area not prohibited by statute or posted by the owner. Many other “shall-issue” states combine different aspects of Ohio’s law, including its open carrying, property posting requirements, and state preemption of local laws on carrying.

- **Iowa – “May-Issue”**

Iowa is a “may-issue” state, which means that the authorities may issue a permit to carry a concealed weapon to an individual, but are under no legal obligation to do so. Iowa law allows for two types of concealed weapon permits: a professional permit and a nonprofessional permit. The professional permit is granted to those whose employment reasonably requires the carrying of a concealed handgun: usually security guards,

private investigators, and peace officers. The professional permit allows a holder to carry only while engaged in or traveling to or from their employment, except in the case of peace officers, who may carry all the time. The nonprofessional permit is granted to a person who can reasonably justify need for a concealed handgun and who meets certain statutory requirements for a permit. The nonprofessional permit is generally granted only to those persons who can demonstrate a specific, viable threat of violence to themselves or their family. Alabama and Connecticut have similar laws allowing, but not requiring, the issuance of concealed weapon permits if good cause is shown. Other states including California and New York allow for the issuance of concealed weapon permits, but do so under very limited conditions and offer more restricted permits.

- **Vermont – No Permit**

Vermont has no permit requirement to legally carry a concealed weapon. As long as a resident may purchase the firearm legally under federal law, that person may legally carry the weapon, loaded or unloaded, openly or concealed, without any government oversight. Because no permit is required to carry a concealed weapon, no prior training is required for carrying a concealed weapon and no criteria are specified for who can carry their firearm concealed. The only places in which carrying is expressly prohibited are schools and state government facilities. Alaska is the only other state that permits carrying concealed weapons without a permit. However, Alaska also retained a “shall-issue” law that existed prior to its 2003 no permit law, which allows residents to apply for and receive a concealed weapon permit in Alaska that may then allow carrying in other states that have reciprocity with the state.

## • **Missouri – Legal Challenges**

Missouri's concealed weapon law, like the laws in some other states, has been challenged since its inception. In 1999, a ballot initiative called Proposition B, which would have created a concealed weapon permit law in Missouri, was defeated by the voters of the state. In 2003, the legislature passed a measure very similar to Proposition B, but the governor vetoed it. The legislature overrode the governor's veto, but an injunction was granted to block the issuance of permits while a challenge to the law was heard in state court. The new concealed weapon permit law was challenged on a number of grounds, including the claim that the law created an unfunded mandate. The State Supreme Court found the concealed weapon permit law to be constitutional, but also found that the state could not force counties to issue permits. The law was later amended to avoid this unfunded mandate problem, and Missouri, like other states where challenges to concealed carry laws have failed, now has a "shall-issue" concealed weapon permit law. Minnesota and New Mexico have recently faced technical or substantive challenges to their laws, but both states now allow concealed carrying.

## **OTHER LEGISLATION**

In the last 20 years, there has been a trend toward decreasing barriers to carrying firearms and increasing private citizens' ability to defend themselves with those firearms. The following legislation illustrates these trends.

### **Mississippi – The "Castle Doctrine"**

The legal principle of self-defense allows individuals to respond with appropriate force when they are threatened or attacked. In most states, however, unless a person is threatened or attacked in their own home, they are

required to retreat rather than respond with force if at all possible. Mississippi recently enacted legislation (2006 SB 2426, Chapter 492) that codifies a relatively new development in self-defense legal theory known as the "Castle Doctrine", which was first enacted into law in Florida in 2005. Mississippi law no longer requires that a person who has a legal right to be somewhere retreat before resorting to force in defending himself or herself. The law also creates a presumption that a person who forcibly and unlawfully enters another's home, vehicle, or business is there to do great bodily harm, thereby justifying the use of deadly force in self-defense. In addition to creating a "castle doctrine" and ending the duty to retreat, the law limits the liability of a person who injures another in self-defense, even if that self-defense proves excessive or unnecessary.

### **Indiana – Lifetime Permit**

Indiana requires a permit to carry a handgun, which allows the holder to carry a weapon openly or concealed. A bill (2006 HB 1176) has been introduced in the Indiana Legislature which would simplify the process by which handgun permit holders renew permits and which would also create a new class of permits. The bill would allow permits that have not yet expired to be renewed by mail or through the Internet provided the applicant continues to meet the permit requirements and the issuing authority has the applicant's fingerprints on file. This bill would also allow a permit applicant to apply for either a four-year permit or a newly created permit that is valid for the life of the permit holder. This new permit would be revocable for cause, just like the four-year permit, but if the permit holder did not cause the permit to be revoked, it would be valid for the life of the holder and would not need to be renewed under most normal circumstances.



**Virginia – Concealed in Vehicle**

The Virginia Legislature is considering a bill (2006 HB 162) that would make it illegal for private property owners to prohibit storing a legally possessed firearm in a locked vehicle on their property. The bill would allow the firearm to be concealed in the vehicle without a concealed firearm permit. This issue comes up most often in the context of employers or landlords prohibiting their employees or tenants from storing firearms in vehicles parked in their privately owned parking lots. The bill would also grant the owner of the parking lot immunity in most cases from any cause of action arising from the storing of the gun in a locked vehicle on the property. This provision is meant to protect property owners who would otherwise prohibit firearms in their parking lots from liability for injuries caused by those firearms. The bill would also create a cause of action and award damages to plaintiffs who file suit because they have been prohibited from storing firearms in their locked vehicles in parking lots.

**Federal Law – State Reciprocity**

A bill has been introduced in the 109th Congress (HR 4547) that would require states

to recognize the concealed weapons permits of other states under the full faith and credit clause of the United States Constitution. The bill was introduced by U.S. Representative Clifford Stearns (R-FL) in December 2005, and is currently in the House Committee on the Judiciary. The bill requires states to treat nonresident concealed weapon permits like nonresident drivers' licenses, and out-of-state permit holders would receive the same privileges that a state grants to its own permit-holding residents. Therefore, the holder of a valid permit from one state could legally carry in any other state provided he or she meets certain criteria. The law would further require states that do not issue permits to their own residents to recognize the permits from other states, allowing out-of-state permit holders to legally carry concealed weapons in the nonpermit granting state. The law would include a default list of places that a permit holder could not carry while in a nonpermit granting state. This list of locations where carrying would be prohibited is based on the most common places prohibited by the states that issue permits and could be supplemented by state laws.

[illegible]

Source: Compiled by Wisconsin Legislative Reference Bureau, March 2006.

### STATE CONCEALED WEAPON LAWS

State	Type of Permit	State Law
Alabama	May Issue	Code of Alabama 13A-11-75
Alaska	Unregulated	Alaska Statutes 18.65.700
Arizona	Shall Issue	Arizona Revised Statutes 13-3112
Arkansas	Shall Issue	Arkansas Code 5-73-309
California	May Issue	California Penal Code 12050
Colorado	Shall Issue	Colorado Revised Statutes 18-12-205
Connecticut	May Issue	Connecticut General Statutes 29-28
Delaware	May Issue	Delaware Code 11-1441
Florida	Shall Issue	Florida Statutes 790.06
Georgia	Shall Issue	Official Code of Georgia 16-11-129
Hawaii	May Issue	Hawaii Revised Statutes 134-9
Idaho	Shall Issue	Idaho Code 18-3302
Illinois	Prohibited	Illinois Compiled Statutes 430:65
Indiana	Shall Issue	Indiana Code 35-47-2-3
Iowa	May Issue	Iowa Code 724.8
Kansas	Shall Issue	Kansas Statutes 21-4201
Kentucky	Shall Issue	Kentucky Revised Statutes 237.110
Louisiana	Shall Issue	Louisiana Revised Statutes 40:1379.3
Maine	Shall Issue	Maine Revised Statutes Annotated 25:2003
Maryland	May Issue	Maryland Code: Public Safety Article 5-306
Massachusetts	May Issue	Massachusetts General Laws 140:129B
Michigan	Shall Issue	Michigan Compiled Laws 28.425b
Minnesota	Shall Issue	Minnesota Statutes 624.714
Mississippi	Shall Issue	Mississippi Code 45-9-101
Missouri	Shall Issue	Missouri Revised Statutes 571.101
Montana	Shall Issue	Montana Code 45-8-321
Nebraska	Prohibited	Nebraska Revised Statutes 28-1202
Nevada	Shall Issue	Nevada Revised Statutes 202.350
New Hampshire	Shall Issue	New Hampshire Revised Statutes 159:6
New Jersey	May Issue	New Jersey Statutes 2C:58-4
New Mexico	Shall Issue	New Mexico Statutes 29:19
New York	May Issue	New York State Consolidated Laws - Penal 400.00
North Carolina	Shall Issue	North Carolina General Statutes 14-415.12
North Dakota	Shall Issue	North Dakota Century Code 62.1-04
Ohio	Shall Issue	Ohio Revised Code 2923.125
Oklahoma	Shall Issue	Oklahoma Statutes 21-1290.1
Oregon	Shall Issue	Oregon Revised Statutes 166.291
Pennsylvania	Shall Issue	Pennsylvania Consolidated Statutes 18:61
Rhode Island	May Issue	Rhode Island General Laws 11-47-11
South Carolina	Shall Issue	South Carolina Code of Laws 23-31-215
South Dakota	Shall Issue	South Dakota Codified Laws 23-7-7
Tennessee	Shall Issue	Tennessee Code 39-17-1351
Texas	Shall Issue	Texas Government Code 411.172
Utah	Shall Issue	Utah Code 53-5-704
Vermont	Unregulated	Vermont Statutes 13-4003
Virginia	Shall Issue	Code of Virginia 18.2-308
Washington	Shall Issue	Washington Revised Code 9.41.070
West Virginia	Shall Issue	West Virginia Code 61-7-4
Wisconsin	Prohibited	Wisconsin Statutes 941.23
Wyoming	Shall Issue	Wyoming Statutes 6-8-104

Source: Compiled by Wisconsin Legislative Reference Bureau, March 2006.